

IN THE U.S. PATENT AND TRADEMARK OFFICE

Application No.: 09/982,317 Group Art Unit: 2616
Filing Date: October 18, 2001 Examiner: Habte Mered
Applicant: Arnab DAS et al.
Title: A HYBRID TRANSMISSION METHOD FOR WIRELESS
COMMUNICATIONS
Attorney Docket: 129250-002120/US

APPELLANTS' REPLY BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

September 2, 2008

ARGUMENTS:

A. The Section 103 Rejections of Claims 1-5, 8, 11-14 and 17

In the Examiner's Answer the Examiner maintains the position that the phrase "separate control channel" does not mean "different" control channel. Appellants disagree.

In support of this position the Examiner relies on: (a) the MPEP, (b) the knowledge of one skilled in the art; (c) the instant specification.

However, as explained below the Examiner's reliance is unconvincing. First, the MPEP sections cited by the Examiner support the Appellants position because the interpretation of the term "separate control channel" adopted by the Examiner is inconsistent with the specification (see MPEP§ 2111.01).

Second, though the Examiner takes the position that one of ordinary skill in the art would interpret the phrase "separate control channel" as meaning the same control channel for each transmission, the Examiner does not provide any support for this position, other than to refer to page 3 and Figure 1 of the instant specification. However, page 3 and Figure 1 do not describe the same control channel for each transmission. Instead, multiple control channels are shown within SPDCCH 150 for each transmission.

Further, the Examiner appears to ignore the clear meaning of the phrase "separate control channel" set forth in the Appellants opening brief and the large amount of caselaw that supports the idea that the Applicants can be their own lexicographers. Yet further, rather than "expand the meaning" of this phrase as the Examiner alleges, the Appellants have simply relied on the specification to support a definition for the phrase "separate control channel".

There is a difference between adding limitations from the specification into the claims and using the specification to support the meaning of a claim term. The Examiner refers to the former while the issue at hand is the later. The Examiner cannot, on the one hand, challenge the interpretation of a phrase in a claim, and, on the other, take the position that it is impermissible

to refer to the most pertinent reference that helps provide guidance as to the meaning of the phrase; the specification.

In sum, the Appellants submit that the Examiner's position that the phrase "separate control channel" cannot mean "different" control channel is inconsistent with the specification.

Appellants respectfully request that members of the Board reverse the decision of the Examiner and allow claims 1-6, 8, 11-14 and 17-19.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
Capitol Patent & Trademark Law Firm, PLLC

By: /John E. Curtin/
John E. Curtin, Reg. No. 37,602
P.O. Box 1995
Vienna, VA 22183
(703)266-3330